

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(g) Applicants for the 932.5–935/941.5–944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not required, except that an application for a frequency in the 942–944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with § 101.103. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5–935/941.5–944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, as-

suming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

§ 101.47 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant will be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 101.45) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 101.51 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it will inform the applicant of the reasons therefor, and the grant will be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the

application for a formal evidentiary hearing) in response to a petition for reconsideration that:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(d) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements;

(3) The application is entitled to comparative consideration (under § 101.45) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 101.45) and the applicants have chosen the comparative evaluation procedure of § 101.51 but the Commission deems such procedure to be inappropriate.

(e) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (d) of this section or part 1 of this chapter.

(f) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

§ 101.49 Grants by random selection.

(a) If an application for an authorization in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 101.45, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.825 of this chapter.

(b) Renewal applications will not be included in a random selection process.

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to § 101.45;